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9 **IN THE SUPREME COURT**
STATE OF ARIZONA

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11 In the Matter of:

Supreme Court No. R-18-0020

12 PETITION TO AMEND THE RULES OF
13 PROCEDURE FOR EVICTION
ACTIONS

14 COMMENTS OPPOSING, IN PART,
15 PROPOSED AMENDMENT TO THE RULES
OF PROCEDURE FOR EVICTION
16 ACTIONS, AND SUGGESTED
IMPROVEMENTS

17 Commenting Party Manufactured Housing Communities of Arizona (“MHCA”)
18 hereby opposes, in part, the Petition to Amend Rules 5 and 13 of the Arizona Rules of
19 Procedure for Eviction Actions (“RPEA”) filed by the State Bar of Arizona on or about
20 January 10, 2018 (the “Proposal”). The Proposal fails to identify any fact-based need
21 warranting the requested amendments, instead relying on the same emotional reasons given
22 in nearly every rule change petition regularly submitted by the State Bar and other tenant
23 advocates. MHCA does not object to requiring landlords to identify that a case involves
24 subsidized housing when it *does in fact involve subsidized housing*. Landlords should not be
25 required to state what the complaint is *not* about. MHCA is unaware of any other area of the
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1 law where rules require the complaint to identify all of the possible legal matters that are not
2 at issue.

3 MHCA also hereby joins in the Objection submitted by Justice of the Peace Gerald A.
4 Williams on behalf of multiple Arizona Justices of the Peace and incorporates that Objection
5 by this reference as if fully set forth herein.

6 **I. BACKGROUND OF THE PROPOSED RULE AMENDMENT**

7 The Rules of Procedure for Eviction Actions (“RPEA”) were drafted by the Arizona
8 State Bar Landlord/Tenant Task Force Rules Committee between 2007 and 2009. Rules
9 Committee members extensively debated and carefully vetted the existing rules. The State
10 Bar does not allege any specific evidence of problems with the existing rules related to
11 subsidized rent. Instead, the Proposal describes how subsidized housing works, states that
12 tenants have a property interest in their residences, and discusses the perils of homelessness
13 after eviction. Nothing new is stated identifying some major problem with landlords in
14 eviction actions improperly seeking judgments for portions of subsidized rent for which
15 tenants should not be responsible. Although hardship provokes sympathy, it is not the basis
16 for a Court procedural rule. There are portions of the Proposal to which MHCA does not
17 object, but the Proposal could be improved, as discussed further herein.

18 **II. THE PROPOSAL**

19 This Proposal would require every eviction action complaint to state “whether or not”
20 the “rental” is a subsidized housing unit. Thus, every landlord, regardless of whether
21 subsidized housing is actually involved, would be required to state what the eviction action
22 complaint is *not* about. Additionally, the proposed amendments to Rule 5(b) and 5(c) are
23 inexplicably redundant. Proposed Rule 5(b) would require every complaint to state whether
24 or not subsidized housing is involved, and if it is, state the total monthly rent and specify the
25 amount for which the tenant is responsible. Proposed Rule 5(c) would require, if the
26 property is subsidized housing, the landlord to state the total amount of the monthly rent, the
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1 tenant’s portion, and the total amount of that portion owed by the tenant. Proposed Rule 13
2 would require judges in *every* eviction action to determine whether the case involves
3 subsidized housing, and if it does, to determine whether there is unpaid rent for which the
4 tenant is liable.

5 **III. MHCA DOES NOT OPPOSE THE PROPOSED AMENDMENT TO RULE 5(C).**

6 MHCA does not object to the proposed amendment to Rule 5(c), which would require
7 the landlord in any eviction action involving subsidized housing to allege in the complaint
8 the total amount of monthly rent, the portion for which the tenant is responsible, and the total
9 amount of the tenant’s portion that the tenant owes.

10 MHCA agrees with the Objection of Judge Williams and suggests that rather than
11 using the term “rental” when referring to the property at issue in the complaint, the term
12 “property” be used.

13 **IV. MHCA OPPOSES THE PROPOSED AMENDMENT TO RULE 5(B).**

14 The proposed amendment to Rule 5(b) of the RPEA would require the landlord in
15 every eviction (regardless of whether subsidized housing is involved) to state what the
16 complaint is *not* about. MHCA is unaware of any other area of the law where rules require
17 the complaint to identify all of the possible legal matters that are not at issue.

18 **V. MHCA OPPOSES THE PROPOSED AMENDMENT TO RULE 13(A)(5).**

19 For the reasons stated in Judge Williams’ Objection, MHCA opposes this
20 amendment.
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22 **VI. CONCLUSION**

23 The Proposal seeks to require every eviction action complaint—whether it relates to
24 subsidized housing or not—to state if it is or is not involved. The Proposal presents no
25 evidence demonstrating why such an obligation—to affirmatively allege what the case is *not*
26 about—must be imposed upon all landlords. Instead, the Proposal trots out the usual
27 justifications for any proposed rule amendments—the perils of homelessness. As proposed,
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1 the amendments are redundant, contain confusing language, and impose an unnecessary
2 obligation to disclose what the case does not involve. MHCA agrees with Judge Williams
3 that proposed Rule 5(b) should be rejected; and proposed Rule 5(c) should be modified to
4 use the term “property” instead of “rental.”

5 RESPECTFULLY SUBMITTED this 21st day of May, 2018.

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7 **WILLIAMS, ZINMAN & PARHAM P.C.**

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9 By: /s/ Melissa A. Parham
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13 A copy of these comments has been mailed
14 this 21st day of May, 2018 to:

15 Lisa M. Panahi
16 General Counsel
17 State Bar of Arizona
18 4201 North 24th St., Suite 100
19 Phoenix, AZ 85016-6288

19 /s/ Melissa A. Parham

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